

K19-653

**AMENDMENT NO. 1 TO PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF NEW ORLEANS
AND
HR&A ADVISORS, INC.
RFP#7823-02438**

THIS FIRST AMENDMENT is entered into by and between the City of New Orleans, represented by LaToya Cantrell, Mayor (the "City"), and HR&A Advisors, Inc., represented by Phillip Kash, Partner, ("HR&A" or the "Contractor"). The City and the Contractor are sometimes collectively referred to as the "Parties." The Amendment is effective as of May 6, 2019 (the "Effective Date").

RECITALS

WHEREAS, on September 21, 2018, the City issued a request for proposals RFP #7823-02438 seeking qualified persons to provide professional services including a feasibility study for the development of affordable housing in New Orleans (the "RFP");

WHEREAS, the Contractor submitted a proposal dated October 22, 2018, and the City has selected the Contractor to perform the professional services described in the RFP;

WHEREAS, on December 28, 2018, effective November 15, 2018, the City and the Contractor entered into a Professional Services Agreement for professional services including a feasibility study for the development of affordable housing in New Orleans (the "Agreement");

WHEREAS, the City has determined that short-term rentals ("STR") have the potential to be used as a development tool to incentivize the production of affordable housing and should be studied further; and

WHEREAS, the City and the Contractor, each having the authority to do so, desire to enter this Amendment to amend the scope for the purpose of analyzing the STR market and to increase the compensation.

NOW THEREFORE, for good and valuable consideration, the City and the Contractor amend the Agreement as follows:

1. **Scope of Work.** The scope of work set forth in the Agreement is amended to include the additional related services set forth in Exhibit A, Additional Scope of Work, attached hereto and made a part hereof.

2. **Compensation.** The compensation described in Article IV Section B of the Agreement is increased by \$83,000.00 to a total amount not to exceed \$219,000.00.

3. **Additional Miscellaneous Provisions.** The following terms and conditions are reaffirmed and/or added to the Agreement:

ARTICLE VI - PERFORMANCE MEASURES

A. **Factors.** The City will measure the performance of the Contractor according to the following non-exhaustive factors: work performed in compliance with the terms of the Agreement; staff availability; staff training; staff professionalism; staff experience; customer service; communication and accessibility; prompt and effective correction of situations and conditions;

timeliness and completeness of submission of requested documentation (such as records, receipts, invoices, insurance certificates, and computer-generated reports).

B. *Failure to Perform.* If the Contractor fails to perform according to the Agreement, the City will notify the Contractor. If there is a continued lack of performance after notification, the City may declare the Contractor in default and may pursue any appropriate remedies available under the Agreement and/or any applicable law. In the event of a notification of default, the City will invoice the defaulting contractor for any increase in costs and other damages sustained by the City. Further, the City will seek full recovery from the defaulting contractor.

ARTICLE VII - LIVING WAGES

To the fullest extent permitted by law, the Contractor agrees to abide by City Code sections 70-801, *et seq.*, which requires payment of a wage to covered employees equal to the amounts defined in the Code ("Living Wage"). If the Contractor fails to comply with the requirements of the Living Wage during the term of the Agreement, said failure may result in termination of the Agreement or the pursuit of other remedies by the City.

ARTICLE IX – NON-DISCRIMINATION

A. *Equal Employment Opportunity.* In all hiring or employment made possible by, or resulting from this Agreement, the Contractor (1) will not be discriminate against any employee or applicant for employment because of race, sex, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, gender identity, creed, culture, or ancestry, and (2) where applicable, will take affirmative action to ensure that the Contractor's employees are treated during employment without regard to their race, sex, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, gender identity, creed, culture, or ancestry. This requirement shall apply to, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. All solicitations or advertisements for employees shall state that all qualified applicants will receive consideration for employment without regard to race, sex, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, gender identity, creed, culture, or ancestry.

B. *Non-Discrimination.* In the performance of this Agreement, the Contractor will not discriminate on the basis, whether in fact or perception, of a person's race, color, creed, religion, national origin, ancestry, age, sex, gender, sexual orientation, gender identity, domestic partner status, marital status, physical or mental disability, or AIDS- or HIV-status against (1) any employee of the City working with the Contractor in any of Contractor's operations within Orleans Parish or (2) any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by the Contractor. The Contractor agrees to comply with and abide by all applicable federal, state and local laws relating to non-discrimination, including, without limitation, Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990.

C. *Incorporation into Subcontracts.* The Contractor will incorporate the terms and conditions of this Article into all subcontracts, by reference or otherwise, and will require all subcontractors to comply with those provisions.

D. The City may terminate this Agreement for cause if the Contractor fails to comply with any obligation in this Article, which failure is a material breach of this Agreement.

4. **Convicted Felon Statement.** The Contractor swears that it complies with City Code § 2-8(c). No Contractor principal, member, or officer has, within the preceding five years, been convicted of, or pled guilty to, a felony under state or federal statutes for embezzlement, theft of public funds, bribery, or falsification or destruction of public records.

5. **Non-Solicitation Statement.** The Contractor swears that it has not employed or retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Amendment. The Contractor has not paid or agreed to pay any person, other than a bona fide employee working for it, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from this Amendment.

6. **Prior Terms Binding.** Except as otherwise provided by this Amendment, the terms and conditions of the Agreement remain in full force and effect.

7. **Electronic Signature and Delivery.** The Parties agree that a manually signed copy of this Amendment and any other document(s) attached to this Amendment delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Amendment. No legally binding obligation shall be created with respect to a party until such party has delivered or caused to be delivered a manually signed copy of this Amendment.

8. **Exhibits.** The following exhibits will be and are incorporated into this Amendment: Exhibit A, Additional Scope of Work.

9. **Order of Documents.** In the event of any conflict between the provisions of this Amendment and any incorporated documents, the terms and conditions of the documents will apply in this order: the Amendment; Exhibit A.

10. **Compliance with the City's Hiring Requirements – Ban the Box.** (i) The Contractor agrees to adhere to the City's hiring requirements contained in City Code Sections 2-8(d) and 2-13(a)-(f). Prior to executing this Agreement, Contractor must provide a sworn statement attesting to its compliance with the City's hiring requirements or stating why deviation from the hiring requirements is necessary. (ii) Failure to maintain compliance with the City's hiring requirements throughout the term of the Agreement, or to provide sufficient written reasons for deviation, is a material breach of this Agreement. Upon learning of any such breach, the City will provide the Contractor notice of noncompliance and allow Contractor thirty (30) days to come into compliance. If, after providing notice and thirty (30) days to cure, the Contractor remains noncompliant, the City may move to suspend payments to Contractor, void the Agreement, or take any such legal action permitted by law or this Agreement. (iii) This section will not apply to any agreements excluded from the City's hiring requirements by City Code Sections 2-8(d) or (g). Should a court of competent jurisdiction find any part of this section to be unenforceable, the section should be reformed, if possible, so that it is enforceable to the maximum extent permitted by law, or if reformation is not possible, the section should be fully severable and the remaining provisions of the Agreement will remain in full force and effect. (iv) The Contractor will incorporate the terms and conditions of this Article into all subcontracts, by reference or otherwise, and will require all subcontractors to comply with those provisions.

[SIGNATURES CONTAINED ON NEXT PAGE]

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IN WITNESS WHEREOF, the City and the Contractor, through their duly authorized representatives, execute this Amendment.

CITY OF NEW ORLEANS

BY: _____

LATOYA CANTRELL, MAYOR

Executed on this 23 of July, 2019.

FORM AND LEGALITY APPROVED:

Law Department

By: Dy Sdm

Printed Name: Troye Taylor

HR&A ADVISORS, INC.

BY: _____

PHILLIP KASH, PARTNER

(EGN)

[EXHIBIT A CONTAINED ON NEXT PAGE(S)]

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EXHIBIT A
ADDITIONAL SCOPE OF WORK

In addition to the Contractor's Obligations set forth in the Professional Services Agreement made effective as of November 15, 2018, the Contractor agrees to:

I. Task 1: Project Kickoff and Existing Conditions Review

1. Task 1.1 Kickoff Call

The Contractor, HR&A, will hold a kick-off meeting with the City, to include representatives from the Office of Community & Economic Development as well as representatives from other departments or offices of City Council members, to guide and confirm study goals and expectations, validate proposed methodologies and schedule, and discuss potential data sources, assumptions, and other study parameters. HR&A will also schedule regular check-in meetings or work sessions through which to provide updates and validate ongoing research and findings.

2. Task 1.2 Existing Conditions Review

HR&A will review legislation and policies related to current STR policies being considered by the City, including, but not limited to, (1) a one-to-one requirement of affordable housing units in exchange for permitted STR units, and (2) a provision requiring the inclusion of affordable housing units in multifamily buildings where more than 25% of units are used as STRs. This review will assess the benefits and drawbacks of the proposed policies and highlight implementation considerations.

3. Task 1.3 Data Collection

HR&A will furnish a written request to the City for information pertinent to this study, which may include data from the City's STR permit records (including total number of qualifying units, their location, and number of operators), as well as any existing City studies or plans related to STRs.

4. Task 1.4 Review of Precedent STR Policy

HR&A will conduct a policy scan to better understand best practices for STRs regulation and how other cities have used STRs as a tool to support affordable housing initiatives. Upon review of best practices with the City, HR&A will incorporate applicable policies to analysis conducted as part of Task 2. HR&A's understanding is that the City Planning Commission ("CPC") has analyzed precedent policies, and HR&A intends to engage CPC to learn from their progress and identify areas for additional research.

II. Task 2: Short Term Rental Financial Analysis

1. Task 2.1 Market Scan

To inform assumptions for STR analysis, HR&A will conduct a high-level market scan to understand the real estate dynamics at play in the short-term rental market. HR&A's analysis will use data from sources including interviews with short-term rental operators or other familiar with the STR market in New Orleans, proprietary third-party data from sources such as AirDNA, City data on STR permits, data analysis on the subject performed by non-profits, and HR&A's own original research. As helpful, HR&A will also look at comparable cities to understand New

Orleans position in the STR market. The market scan will be focused on identifying key data points for STR market conditions, including:

- The number of STR units available in qualifying properties;
- Average daily rate and relevant pricing information; and
- Average occupancy.

2. Task 2.2 STR Operator Business Model Assessment

In addition to considering the impacts on multifamily property owners, evaluating the STR market in New Orleans also requires an understanding of the business model of STR operators. Because operators and property owners generally function as separate entities with separate financial considerations, they must each be considered independently. To accomplish this, HR&A will research the structure of STR operators in New Orleans, including, but not limited to:

- Pricing, duration, and terms of master leases signed between short-term rental operators and property owners, and
- Operating expenses associated with STR units.

HR&A will then evaluate the STR operator business model to determine the financial viability of operations and feasibility of operations under different policy scenarios.

3. Task 2.3 Property Value and Development Feasibility Impacts Analysis

Using information gathered as part of Tasks 2.1 and 2.2, HR&A will develop a financial model to determine the impact of STR units on multifamily building value and new development feasibility. The focus of the analysis will be on understanding any value premium associated with STR leases relative to traditional leases for residents occupying a unit, and the corresponding impact to operating income and total property value. Based on any identified value premium, HR&A will then assess the ability of the financial benefits provided by STR units to support: (1) affordable housing requirements currently being considered by the City and (2) alternative affordable housing strategies identified by HR&A as part of Task 1.4, including feasibility of an in-lieu fee provision.

III. Task 3: Summary of Findings and Policy Recommendations

1. Task 3.1 Summary of Findings and Policy Recommendations

HR&A will create a draft report summarizing the findings of HR&A's analysis, including market conditions, financial analysis inclusive of STR operators and multifamily property owners, and policy implications. The report will also include assessment of policies currently under consideration by the City and policy recommendations that align with market conditions. HR&A will work with the City to iterate through a draft version of the deliverable to ensure that the document is aligned with expectations and desired outcomes.

2. Task 3.2 Presentation to the City

HR&A will travel to New Orleans to present findings to City officials or other relevant stakeholders in New Orleans with whom the project team would like to communicate findings.

Schedule

Based on the City's desired timeline, HR&A will complete the scope of services described for this phase of work over a ten-to twelve-week period. HR&A will work with the City to ensure relevant project milestones are met in alignment with any key dates for STR legislation.

[END OF AMENDMENT]